# When does an Auto Policy end? Perhaps not when you think…

In *Echelon General Insurance Company v. Her Majesty the Queen*, 2016 ONSC 5019 Justice Matheson of the Ontario Superior Court clarified that in order to formally terminate a policy of auto insurance an insurer must comply with the notice obligations contained in section 236 of the *Insurance Act*, rather than merely allowing the policy to lapse.

In this instance a Policyholder had a six month auto policy with Echelon General Insurance Company. Shortly after the policy commenced, Echelon sent a letter to the Policyholder purporting to cancel the policy due to non-payment of a premium. Echelon received no response, and there was no further communication between it and the Policyholder. Approximately a year after the end of the six month term, the Policyholder was involved in an accident when he struck a pedestrian. The central question of this case was whether the auto policy was still in force at the time of the accident so as to provide coverage for accident benefits to the claimant.

In the first instance, an arbitrator noted that s.236 of the *Insurance Act* required an insurer to provide appropriate notice of non-renewal but concluded that the policy had terminated at the end of its six-month term. The arbitrator concluded that the legislative intent was not to extend coverage into perpetuity with no offer and acceptance, or premiums paid.

On appeal, Justice Matheson found the arbitrator erred in applying s.236 of the *Insurance Act*. Justice Matheson found section 236 imposes certain notice requirements "regarding the renewal or non-renewal of a contract of insurance, and provides that the contract of insurance remains in force until the insurance company has complied with its notice obligations." While Echelon argued that this operated only during the term of the policy, the Court found such an interpretation would defeat the purpose of notice obligations. Rather, it was not enough to allow the policy to terminate pursuant to its own terms - a policy could continue until an insurer discharges its statutory obligations for notice. Section 236(5) is clear in placing the risk of non-compliance on the insurer.

For such policies, section 236 therefore makes termination under ordinary contract law insufficient. Justice Matheson referred to the Supreme Court of Canada's decision in *Patterson v Gallant*, [1994] 3 S.C.R. 1080. In that case, Prince Edward Island legislation was at issue, and the SCC had noted that where there is an "… absence of legislation to the contrary,… a lapsed policy does not need to be formally terminated". Thus, the decision in *Patterson* is recognition that that the common law of offer and acceptance could be altered by legislation.

The *Insurance Act* does alter the common law of contracts and so a lapsed policy should still be formally terminated pursuant to the notice obligations of section 236. Justice Matheson further added that section 236 conforms with the legislative intent behind the *Insurance Act*, including reforms to Ontario's compulsory automobile insurance regime and provides some measure of protection to victims of automobile accidents facing drivers with no insurance. By ensuring insurance companies remind their policyholders that a policy is about to lapse, and by ensuring that a policy does not lapse until such an obligation is fulfilled, section 236 furthers the public policy rationale supporting a continuity of automobile insurance.

The broader implication of this decision is a reminder that the common law of contracts, like all common law, may be altered by legislation, particularly in order to protect public interest. While there is freedom of contract and public interest in the enforcement of contracts on their terms, there are instances where such contractual freedom is limited. Like consumer protection, the assurance of insurance continuity to protect against uninsured motorists is one such example.